

# Minutes

## Bar Harbor Town Council

**January 29, 2008**

- I. CALLS TO ORDER – 7:00 P.M.** – In attendance were Councilors: Ruth Eveland, Robert Garland, Paul Paradis, Ken Smith, Julia Schloss, Greg Veilleux, Robert Jordan, Jr.; and Town Manager Dana Reed.

**A. Excused Absence(s)** – There were none.

### **II. APPROVAL OF MINUTES**

**A. January 15, 2008 – Regular Meeting**

**B. January 17, 2008 – Special Meeting**

**C. January 22, 2008 – Special Meeting**

**D. January 24, 2008 – Special Meeting**

Mr. Paradis, with second by Mr. Smith, moved to adopt the minutes of January 15, 22, and 24<sup>th</sup> as presented. Motion passed 7-0. Mr. Paradis requested amending item VI. F. motion of the January 17<sup>th</sup> minutes to read: “Motion failed 2-5(Nay: Mr. Garland, Mr. Paradis, Mr. Smith, Mr. Veilleux, and Mr. Jordan)”. Mr. Paradis, with second by Mr. Smith, moved to adopt the minutes of January 17<sup>th</sup> as amended. Motion passed 7-0.

- III. ADOPTION OF AGENDA** – Mr. Smith, with second by Mr. Paradis, moved to adopt the agenda as presented. Motion 7-0.

- IV. FINANCIAL STATEMENTS** – Mr. Paradis, with second by Ms. Schloss, moved to accept and file the December 31, 2007 as presented. Motion passed 7-0.

- V. PUBLIC HEARINGS:** (none scheduled)

### **VI. REGULAR BUSINESS:**

- A. Water & Sewer Fee Commitment** – *Request of the Town Manager for water and sewer fee commitment to the Town Treasurer for collection.* – Mr. Smith, with second by Mr. Paradis, moved to sign the Certificates of Commitment for Seasonal Water and Sewer Fees. Motion passed 7-0.

#### **B. Planning Board:**

- Possible acceptance of the resignation of Jennifer Booher.* – Mr. Paradis, with second by Mr. Smith, moved to accept the resignation of Jennifer Booher from the Planning Board, effective immediately, and to request staff to forward the Town Council’s appreciation for her service. Motion passed 7-0.
- Review of applications and possible appointment of members.* – Mr. Paradis nominated David Bowden to an open seat on the Planning Board with

an expiring term of June 2009. David Bowden was declared appointed by an unanimous vote, 7-0.

Mr. Veilleux nominated Lynne Williams for an open seat on the Planning Board with a term expiring in June of 2009. Lynne Williams was declared appointed by a vote of 4-3 (Nay: Ms. Eveland, Mr. Jordan, Mr. Smith).

- C. Economic Development Task Force** – *Review of application(s) and possible appointment of members.* – Mr. Paradis, with second by Mr. Garland, moved to table this item until the March 4, 2008 meeting. Motion passed 5-2 (Nay: Mr. Jordan, Ms. Schloss).
- D. Parking** – *Request of Alicia Riddell that Council ask the Parking and Traffic Committee to conduct an assessment of the on-street parking for the neighborhood including Wayman Lane, Livingston Road, and Snow, Center and Oliver Streets.* – Mr. Jordan, with second by Ms. Schloss, moved to request the Parking and Traffic Committee to conduct an assessment of the on-street parking for the neighborhood including Wayman Lane, Livingston Road, and Snow, Center and Oliver Streets and to report back to the Town Council by April 15, 2008. Motion passed 6-1 (Nay: Mr. Smith).
- E. Fund Balance Policy** – *Annual adjustment of the amount of fund balance designated for working capital.* – Mr. Smith, with second by Mr. Paradis, moved to order that the Town, in accordance with its fund Balance Policy, designate in the unreserved Fund Balance section of the General fund an amount equal to \$1,470,000 to be labeled “Designated for Working Capital”. Motion passed 7-0.
- F. FY07 Audit** – *Report of auditor James W. Wadman, CPA.* – Following a favorable review, Mr. Paradis, with second by Mr. Smith, moved to accept and file the audited financial statements for Fiscal Year 2007. Motion passed 7-0.
- G. FY08 Budget Transfer** – *Review and possible approval of a transfer from Council’s Contingency Account to provide funds for participation in the American Port Authority Association Cruise Seminar.* – Mr. Paradis raised the possibility of a conflict of interest, since this item deals with his attending the AAPA Cruise Seminar in San Francisco, CA. Mr. Smith, with second by Mr. Jordan, moved not to recuse Mr. Paradis from this item. Motion failed 3-3-1 (Nay: Ms. Eveland, Ms. Schloss, Mr. Garland; Recused: Mr. Paradis). Mr. Garland, with second by Ms. Schloss, moved to recuse Mr. Paradis from this item. Motion passed 4-2-1 (Nay: Mr. Smith, Mr. Jordan; Recused: Mr. Paradis).
- Mr. Garland, with second by Mr. Smith, moved to transfer \$2,465 from the General Fund Contingency account #1036-5906, to the Town Council cost center, with \$850 to go to the Training account #1010-5844 and \$1,615 to go to the Travel account #1010-5846. Motion passed 6-0-1 (Recused: Mr. Paradis).

- H. Appeals Board: Fees & Charges** – *Request of the Appeals Board for Council to re-assess the fee table for administrative appeals and reconsideration (at the request of non-business entities) to adequately cover the administrative and professional review costs to the Town.* – Following discussion, Mr. Paradis, with second by Mr. Smith, moved to raise the appeals board fees for variances, administrative appeals, findings under the Town Code section 125-55, and Appeals Board reconsideration to be in line with Small Commercial Fees effective immediately. Motion passed 6-1 (Nay: Mr. Jordan).
- I. FY09 Budget** – *Tentative adoption pending a public hearing on February 12.* – Mr. Paradis, with second by Mr. Jordan, moved to tentatively adopt the Town Manager's budget as amended, pending a public hearing on February 12, 2008. Motion passed 7-0.
- J. Land Use Ordinance Amendments: June 2008** – *Review and possible adoption of Council Orders to place the following LUO changes on the Warrant for the annual Town Meeting:*
- 1. Wireless Communication Facilities Ordinance** – There were a number of people in the audience wishing to speak to this ordinance. Mr. Paradis, with second by Mr. Garland, moved to limit public comment to 3 minutes per appearance and a total of 8 minutes per person. Motion passed 6-1 (Nay: Ms. Schloss).
- Mr. Jordan, with second by Mr. Smith, moved to limit public comment to Bar Harbor Residents only. Motion passed 7-0.
- Following public comments, Mr. Paradis, with second by Mr. Smith, moved to remove "FM" from 2(d) so it reads "two-way antenna". Motion passed 7-0.
- Mr. Paradis, with second by Mr. Smith, moved to exempt communications placed in existing structures from Planning Board scrutiny. Motion failed 2-5 (Nay: Mr. Veilleux, Ms. Schloss, Ms. Eveland, Mr. Garland, Mr. Smith).
- Mr. Paradis, with second by Mr. Smith, moved to remove the reference to Acadia National Park from the proposed ordinance language. Motion failed 3-4 (Nay: Ms. Eveland, Ms. Schloss, Mr. Garland, Mr. Veilleux).
- Mr. Paradis, with second by Mr. Smith, moved to add camouflage to 9(C). Motion passed 7-0.
- Mr. Paradis, with second by Mr. Smith, moved to remove monitoring requirements from the proposed ordinance – items 14(e & f). Motion failed 1-6 (Nay: Ms. Eveland, Mr. Garland, Mr. Smith, Ms. Schloss, Mr. Veilleux, Mr. Jordan).
- Mr. Jordan, with second by Ms. Schloss, moved to make proposed ordinance language consistent with current LUO language. Motion passed 7-0.

Mr. Veilleux, with second by Mr. Schloss, moved to change 14(e) from every 2 years to every year. Motion passed 6-1(Nay: Mr. Paradis).

Mr. Garland, with second by Mr. Smith, moved to provide a definition of Array in the definitions section of the proposed ordinance. Motion passed 7-0.

Mr. Paradis, with second by Mr. Garland, moved to direct staff to return to Council on February 12, 2008, during its regular meeting, with a revised order reflecting the changes made by Council action this evening. Motion passed 7-0.

At 10:16 p.m., Mr. Jordan, with second by Mr. Smith, moved to take a five minute break. Motion passed 7-0. The meeting reconvened at 10:23 p.m.

2. **Planning Board Review of Non-Conformities Ordinance** – Mr. Paradis, with second by Mr. Smith, moved to adopt and sign the Council Order for Planning Board Review of Non-Conformities Ordinance. Motion passed 7-0.

#### **Order**

Of the Bar Harbor Town Council  
For the June 3, 2008 Town Meeting

It is hereby ordered that the following article be placed on the warrant for the 2008 annual town meeting, with voting thereon to be held by Australian ballot on June 10:

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#### Warrant Article

**LAND USE ORDINANCE AMENDMENT – Planning Board Review of Non-Conformities** – Shall an Ordinance dated January 29, 2008 and entitled “An Ordinance to Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance Section 125-53, to add a process for Planning Board review of non-conforming situations” be enacted?

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#### Planning Board Review of Non-Conformities Ordinance

#### **An Amendment to add a process for Planning Board review of non-conforming situations.**

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

[Please Note: Old language is ~~stricken~~. New language is underlined.]

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#### **Chapter 125 , LAND USE ORDINANCE**

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#### **ARTICLE IV Nonconformities**

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§ 125-53. General policies.

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H. Any relief sought under this Article to the Planning Board shall adhere to the process outlined in Article V, Site Plan Review as may be applicable.

[The End]

3. **Appeals Board Procedures Ordinance** – Mr. Paradis, with second by Mr. Smith, moved to adopt and sign the Council Order for Appeals Board Procedures Ordinance. Motion passed 7-0.

**Order**

Of the Bar Harbor Town Council  
For the June 3, 2008 Town Meeting

It is hereby ordered that the following article be placed on the warrant for the 2008 annual town meeting, with voting thereon to be held by Australian ballot on June 10:

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Warrant Article

**LAND USE ORDINANCE AMENDMENT – Appeals Board Procedures** – Shall an Ordinance dated January 29, 2008 and entitled “An Ordinance to Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance Section 125-53, Section 125-102, Section 125-103 and Section 125-106 to Update and Amend the Administration and Review of Variances, Administrative Appeals and Reconsideration Requests” be enacted?

Appeals Board Procedures Ordinance

**An Amendment to Update and Amend the Administration and Review of Variances, Administrative Appeals and Reconsideration Requests.**

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

[Please Note: Old language is ~~stricken~~. New language is underlined.]

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**Chapter 125 , LAND USE ORDINANCE**

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**ARTICLE IV Nonconformities**

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§ 125-53. General policies.

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G. Any relief sought under this Article to the Board of Appeals shall adhere to the process found in Article IX Section 125-102.C paragraphs (1), (2), and (3), respectively, as well Section 125-102.D., E. , F. and G. respectively.

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**ARTICLE XI, Appeals and Variances**

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§ 125-102. Variances.

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E. Hearing. Within 45 days of the Planning Department's receipt of the required copies of a variance application, unless delay is caused by the petitioner's failure to comply with the requirements of Subsection D(1), the Board of Appeals shall conduct a public hearing on said application in accordance with the following:

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(2) Mailed notice. At least 10 days prior to the hearing date, written notice of said hearing shall also be mailed by ~~certified mail, return receipt requested~~, US Mail first-class postage to the applicant, to the owners of all property within 300 feet of the property in question, and to the Bar Harbor Town Council and the Bar Harbor Planning Board, each of which shall be parties. The owners of property shall be considered to be those shown on the Town's tax list as the persons against whom taxes are assessed. The Board of Appeals shall, in each case, maintain a list of property owners so notified. Notice shall be deemed received if mailed to an owner's last known address according to the Town tax records. Failure of any property owner actually to receive notice shall not necessitate another hearing or invalidate any actions of the Board of Appeals.

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§ 125-103. Administrative appeals.

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C. Submissions generally.

(1) Appellate review hearings.

(a) At least 20 days prior to the Board of Appeals meeting at which an appellant is to be heard in an appellate review hearing, the appellant shall file with the Planning Department ~~40~~ 12 copies of the parts of the record on appeal upon which the appellant plans to rely, along with ~~40~~ 12 copies of a written statement setting forth the appellant's position as to the basis for the appeal and the relief requested;

(b) No later than seven days prior to the public hearing on the appeal, any other person wishing to present either parts of the record on appeal not submitted by the appellant or a written statement setting forth that person's position on the appeal may file ~~40~~ 12 copies of such materials with the Planning Department.

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D. Hearing.

(1) Appellate review hearings.

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(e) Mailed notice. At least 10 days prior to the hearing date, written notice of said hearing shall also be mailed by US Mail first-class postage ~~certified mail, return receipt requested~~, to the appellant, to the owners of all property within 300 feet of the property in question, and to the Bar Harbor Town Council, Design Review Board, and the Bar Harbor Planning Board. The owners of property shall be considered to be those shown on the Town's tax list as the persons against whom taxes are assessed. The Planning Department shall, in each case, maintain a list of property owners so notified. Notice shall be deemed

received if mailed to an owner's last known address according to the Town tax records. Failure of any property owner actually to receive notice shall not necessitate another hearing or invalidate any actions of the Board of Appeals.

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(l) Deliberation and decision. Within 30 days after the public hearing on an application for administrative appeal, the Board of Appeals shall deliberate to determine whether the record on appeal shows that the decision appealed is clearly contrary to the specific provisions of this chapter. The Board shall defer to all findings of fact by the decision-maker below that are supported by substantial evidence.

[1] If the Board of Appeals finds that the decision is, in fact, contrary to the specific provisions of this chapter it may reverse the decision, subject to such terms and conditions it considers advisable to protect the public's health, safety and general welfare, or it may vacate the decision and may remand it to the Planning Board, Design Review Board or the Code Enforcement Officer for further proceedings consistent with Board of Appeals' decision.

[2] If the Board of Appeals does not find that the decision appealed is clearly contrary to the specific provision of this chapter, it shall deny the appeal.

[3] In either case, the Board of Appeals shall, within 14 ~~working~~ days after the completion of its deliberations, mail or hand-deliver to the appellant, the appellant's representative and the Chairpersons of the Bar Harbor Planning Board, Design Review Board and Town Council a written copy of its decision, including specific written reasons supporting the decision.

(2) Evidentiary hearings.

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(c) Deliberations and decision. Within 30 days after the public hearing on an application for an administrative appeal, the Board of Appeals shall deliberate to determine if a preponderance of the evidence presented in the appeal shows that the appellant is entitled to the relief requested.

[1] If the Board of Appeals finds that the appellant is entitled to relief, it may reverse the decision, subject to such terms and conditions it considers advisable to protect the public's health, safety and general welfare, or it may vacate the decision and may remand it to the Planning Board, Design Review Board or the Code Enforcement Officer for further proceedings consistent with the Board of Appeals' decision.

[2] If the Board of Appeals does not find that the preponderance of the evidence shows that the appellant is entitled to relief, it shall deny the appeal.

[3] In either case the Board of Appeals shall, within 14 ~~working~~ days after the completion of its deliberations, mail or hand-deliver to the appellant, the appellant's representative and the Chairpersons of the Bar Harbor Planning Board, Design Review Board and Town Council a written copy of its decision, including specific findings of fact supporting the decision.

#### § 125-106. Reconsideration.

Upon the written request and the payment of such fee as may be established by the Bar Harbor Town Council, by any party, made within 10 days from the hearing at which a decision was made pursuant to this section, the Board of Appeals may reconsider such decision and, in doing so, may conduct further hearings. A request for reconsideration shall set forth in detail the reasons that the request should be granted. ~~Within 15 days of a request for reconsideration~~ At its next regularly scheduled meeting, the Board of Appeals shall meet to decide whether it shall grant the request and to establish the procedural guidelines for any reconsideration. In no event shall the procedures associated with a reconsideration, including any hearing and the time for deliberation, extend beyond 45 days from the date of the ~~request for reconsideration~~ of the hearing at which a decision was made. In the event of a request for reconsideration, the time for taking an appeal to Super-

rior Court shall be extended to 30 days from the date of the Board of Appeals' ultimate decision on such request.

[The End]

- 4. Groundwater Protection Ordinance** – Mr. Paradis, with second by Ms. Schloss, moved to adopt and sign the Council Order for the Groundwater Protection Ordinance. Motion passed 7-0.

**Order**

Of the Bar Harbor Town Council  
For the June 3, 2008 Town Meeting

It is hereby ordered that the following article be placed on the warrant for the 2008 annual town meeting, with voting thereon to be held by Australian ballot on June 10:

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Warrant Article

**LAND USE ORDINANCE AMENDMENT – Groundwater Protection** – Shall an Ordinance dated January 29, 2008 and entitled “An Ordinance to Amend the Bar Harbor Code, Chapter 125, Land Use Ordinance Section 125-66 and Section 125-67 to update and change the requirements pertaining to the protection of groundwater” be enacted?

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Groundwater Protection Ordinance

**An Amendment to update and change the requirements pertaining to the protection of groundwater.**

*The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:*

[Please Note: Old language is ~~stricken~~. New language is underlined.]

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**Chapter 125 LAND USE ORDINANCE**

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**ARTICLE V, Site Plan Approval**

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**§ 125-66. Submission requirements.**

An application for a major site plan or subdivision review shall include, as applicable:

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- J. Maps, plats or plans. Subject to the note below, one or more maps, plats or plans indicating such of the following as are applicable:

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(15) A medium-density soils survey, unless a high-density survey is required by the Planning Board, identifying the soils' boundaries and names in the proposed development, with soils information superimposed on a plot plan in accord with the United States Department of Agriculture ~~Soil~~ Natural Resources Conservation Service National Cooperative Soil Classification;



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M. Subsurface wastewater disposal. When sanitary waste disposal is to be accomplished by subsurface wastewater disposal systems:

- (1) An on-site investigation by a ~~soils scientist, certified by the Maine Department of Human Services~~ site evaluator licensed by the Maine Department of Health and Human Services, and containing the types of soils, locations of test sites, and proposed locations;
- (2) Designs of the most appropriate and suitable subsurface wastewater disposal systems on form HHE 200;
- (3) Evidence of the cumulative impact of the proposed systems when considered in conjunction with other subsurface wastewater disposal systems in the vicinity.

N. Groundwater. With respect to groundwater to be extracted by the development:

- (1) ~~A statement signed by an appropriate professional as to the quantity of groundwater to be extracted, expressed as an annual total, maximum monthly rate and a maximum daily rate~~ A statement as to the quantity of groundwater to be extracted. For residential development the groundwater extraction quantity shall be at least equal to the wastewater disposal quantity based on the Plumbing Code and Site Evaluation. For other ground water uses such as irrigation or heat pumps, the statement must be made by a registered Maine Professional Engineer. The information submitted must include the expected quantity of water withdrawal expressed as an annual total, maximum monthly rate and a maximum daily rate;
- (2) ~~For any development in which the extraction will exceed 1,000 gallons per day, a groundwater impact assessment~~ A Hydrogeologic Assessment is required when any one or more of the following is proposed:
  - (a) Groundwater withdrawal rates to exceed 300 gallons per day per well and/or 1,000 gallons per day for the development;
  - (b) Lot sizes smaller than recommended by the Nitrate Analysis;
  - (c) Public water supply on the site proposed for development;
  - (d) Wastewater flows that exceed 2,000 gallons per day in one or more engineered septic systems;
  - (e) Wells proposed to be located within 200 feet of the shoreline or farther than 200 feet from the shore but located adjacent to existing lots where wells are within 600 feet of the shoreline and lots are less than 1 acre in size;
  - (f) Development on or within 300 feet of a mapped Sand and Gravel Aquifer;
  - (g) Development within 300 feet of an existing public water supply;
  - (h) Wastewater disposal within 100 feet of a surface water body;
  - (i) Quarrying / mining operations; and/or,
  - (j) Commercial / Industrial development.
- (3) An Analytic, Finite-element, or Finite-difference Ground Water Model is required when any one or more of the following is proposed:
  - (a) Multiple wells in a sensitive setting (such as 2 or more wells proposed within 200 feet of the shore);

- (b) More than 15 lots served by onsite water and wastewater;
- (c) Lots smaller than ½ acre in size on average;
- (d) Engineered septic systems; and/or
- (e) Public water supply developed on site to serve the development.

(4) Onsite Drilling with locations recorded on Maine State Grid Coordinates, geologic logging, monitoring well installation, groundwater level measurement to NGVD29 datum, and background water quality measurements are required when any one or more of the following is proposed:

- (a) Large quantity hazardous waste generator;
- (b) More than 1,320 gallons of petroleum products stored on site;
- (c) Subdivision of 15 or more lots with an average lot size of less than 3 acres; and/or,
- (d) Development on or within 300 feet of a sand and gravel aquifer.

This drilling shall include a minimum of 3 wells. The minimum well requirement shall include 1 upgradient well, 1 downgradient well, and a well at another location on the site. If soil is greater than 10 feet thick, explorations shall be nested with both surficial and bedrock wells. Bedrock wells shall extend at least 50 feet into rock. Onsite water quality testing shall include total coliform, E coli, sodium, calcium, magnesium, potassium, iron, manganese, arsenic, sulfate, nitrate as nitrogen, chloride, carbonate, bicarbonate. If salt water intrusion is a potential issue, testing shall include iodide and boron. If a waste material or recycled waste material other than residential sewage will be generated or stored on the site, water quality testing shall include tests for chemical constituents of the material that are soluble and for which a Maximum Contaminant Level (MCL) or Maximum Exposure Guideline (MEG) has been established by the Maine Department of Health and Human Services. Minimum Detection Limits for all parameters for which an MCL or MEG are established shall be no higher than the applicable standard.;

(3) For any development that will not be served by a public sewer and that will contain five or more lots or dwelling or rental units or that will generate 500 gallons of wastewater in any two month period and that will be located over or within 300 feet of a sand and gravel aquifer, as shown on a map titled "Hydrogeologic Data for Significant Sand and Gravel Aquifers" by the Maine Geologic Survey, 1985; contain less than 100,000 square feet in total area; have an average density of less than 10,000 square feet per dwelling unit; or as determined by the Planning Board, have unique or fragile characteristics, a hydrogeologic assessment prepared by a certified geologist who has demonstrated hydrology impact assessment experience and training, such assessment to contain at least the following:

- (a) A map showing the basic soils types;
- (b) The depth to the water table at representative points throughout the development site;
- (c) Drainage conditions throughout the development site;
- (d) Data on the existing groundwater quality, either from test wells on the development site or from existing wells on neighboring properties;
- (e) An analysis and evaluation of the impact of the development on groundwater resources (for residential developments, the evaluation shall, at a minimum, project nitrate nitrogen concentrations, and for development within the watershed of a lake, projections of phosphate impacts);
- (f) Projections of groundwater quality shall be made at any wells within the development site and at the development's boundaries or at a distance of 500 feet from potential contamination sources, whichever is a shorter distance. Pro-

~~jections of groundwater quality shall be based on the assumption of drought conditions (assuming 60% of annual average recharge from precipitation).~~

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#### **§ 125-67. General review standards.**

The Planning Board, before granting site plan approval, must find that the proposed plan will comply with each of the following standards. In all instances the burden of proof shall be upon the applicant.

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- K. Groundwater. All site plans shall demonstrate that the proposed development shall not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater or of a body or course of water and that the development shall comply with the following standards:

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- (4) ~~No development shall increase any contaminant concentration in the groundwater to more than 1/2 of the primary drinking water standards. No development shall increase any contaminant concentration in the groundwater to more than the secondary drinking water standards. No development shall directly or indirectly cause an increase in any contaminant concentration in the groundwater at the property boundary with adjacent existing lots to more than 1/2 of the difference between the existing water quality and the EPA National Primary Drinking Water Regulations (primary standards) or the Maine Maximum Exposure Guidelines for Drinking Water (MEGs), whichever is more restrictive. No development shall increase any contaminant concentration in the groundwater to more than the EPA National Secondary Drinking Water Regulations standards.~~
- (5) If existing groundwater quality already exceeds the primary standards and MEG's and the development is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
- (6) ~~If existing groundwater quality already exceeds the secondary standards, the development shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration. If existing groundwater quality already exceeds the primary standards, MEGs, and/or secondary standards, the quality of any discharge from the development shall not exceed or cause any other standard to exceed the applicable water quality standard(s).~~
- (7) Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the hydrogeologic assessment of groundwater impacts, if one has been required. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the final plan and as restrictions in the deeds to the affected lots.
- (8) ~~The Board shall require lot sizes larger than required by this chapter where completion of the following formula indicates such lot sizes or densities are necessary in order to meet the standards above:~~

$$\begin{array}{l} \text{Soil Type} \quad \text{Value of } q \\ d = (q) (C_{\text{nitrate}} - C_b) + (C_s) (q_s) \end{array}$$

~~d = allowable housing density in dwellings per acre~~  
~~q = rate of natural groundwater recharge, averaged over the year in gpm/acre;~~  
~~some representative numbers, based on soil types, are:~~

~~Glacio marine clay silt 0.11 to 0.23~~  
~~Thick silty clay 0.23~~  
~~Thin soil over rock 0.33~~  
~~Thin till over rock 0.46~~  
~~Sandy glacial till 0.57~~  
~~Glacio marine fine sands 0.91~~  
~~Raised beach deposits 1.16~~  
~~Sand and gravel 1.16~~

~~C<sub>nitrate</sub> = resultant concentration of nitrate nitrogen in groundwater as a result of subsurface sewage disposal systems, 5 mg/l~~

~~C<sub>b</sub> = background concentration of nitrate nitrogen in groundwater; if records are not available, assume 0.25 mg/l~~

~~C<sub>s</sub> = nitrate nitrogen concentration in typical septic tank discharge, 30 mg/l~~

~~q<sub>s</sub> = average leach field discharge rate per dwelling, which is equal to 70% of 300 gallons per day or 0.15 gal/min.~~

Nitrate Analysis: Unless a more site-specific groundwater modeling analysis demonstrates that the minimum lot size is adequate to protect groundwater, the Board shall require lot sizes larger than the minimum lot size required by this chapter where soil conditions warrant the additional dilution potential to meet ground water quality standards identified above. The following formula shall be used to calculate minimum allowable lot sizes.

#### Nitrate Analysis Formula

$$A = (q_s \times C_s) / [R_{\text{recharge}} \times (C_{\text{nitrate}} - C_b)]$$

A = lot size (acres per dwelling)

q<sub>s</sub> = average septic discharge rate = 270 gpd/dwelling = 0.19 gpm/dwelling (if more than 3 bedrooms per dwelling, use the design flows for single family dwellings provided by the Maine Department of Health and Human Services in the Maine Subsurface Waste Water Disposal Rules, 10-144 CMR 241).

C<sub>s</sub> = assumed concentration of nitrate-nitrogen reaching the water table from septic discharge = 40 mg/l

C<sub>nitrate</sub> = limiting concentration of nitrate-nitrogen in ground water = 5 mg/l (equal to half the EPA primary drinking water standard)

C<sub>b</sub> = background concentration of nitrate-nitrogen in the ambient ground water (if not known, assume = 0.25 mg/l)

R<sub>recharge</sub> = rate of natural groundwater recharge, averaged over the year in gpm/acre; Some representative numbers, based on soil types and Bar Harbor average annual precipitation, are:

<u>Soil Type</u>	<u>Recharge (as % of pre- cipita- tion<sup>(1)</sup>)</u>	<u>Recharge Rate (gpm/acre )</u>
<u>Glaciomarine clay-silt<sup>(2)</sup></u>	<u>5%</u>	<u>0.14</u>
<u>Thick silty clay</u>	<u>10%</u>	<u>0.28</u>
<u>Thin silty till over rock</u>	<u>15%</u>	<u>0.43</u>
<u>Sandy glacial till</u>	<u>25%</u>	<u>0.71</u>

<u>Glacio-marine fine sands</u>	<u>40%</u>	<u>1.14</u>
<u>Raised beach deposits</u>	<u>50%</u>	<u>1.42</u>
<u>Sand and gravel</u>	<u>50%</u>	<u>1.42</u>

\* Notes:

1) Average annual precipitation in Bar Harbor = 55 inches/year (USGS, 2002).

2) Glaciomarine clay-silt soils are not only limiting in their ability to treat residential wastewater, but they also have limitations relating to other site engineering issues such as slope stability, drainage and siltation potential.

(9) The quantity of water to be taken from groundwater sources will not lower the groundwater table at the property lines by more than two feet to the surficial aquifer, 10 feet to the bedrock aquifer or to the detriment of any existing groundwater, cause saltwater intrusion to any existing well, cause undesirable changes in groundwater flow patterns, or cause unacceptable ground subsidence, ~~based on the conditions of a drought with a probability of occurrence of once in 10 years.~~

(10) ~~The proposed development shall not cause water pollution or other diminution of the quality of the groundwater supply from which the water is to be extracted.~~ Salt water intrusion analysis shall be based on a drought year occurring between average years with a total precipitation in the drought year of 70% of average annual precipitation of 55 inches. The proposed development shall not cause chloride concentrations to exceed 250 mg/l at the proposed well, and/or existing wells.

(11) The proposed development shall not be within the defined source water protection area ~~aquifer recharge area~~ of a public water supply, unless notice is given to the operator thereof and the Board has considered any information supplied by the operator and finds that no adverse effect on a public water supply will result.

(12) Nothing in this procedure or any decision by the Planning Board shall be deemed to create groundwater rights other than those rights which the applicant may have under Maine law.

(13) The proposed development shall not otherwise cause undue water pollution, taking into consideration at least the following factors:

- (a) The elevation of the land above sea level and its relation to the floodplains;
- (b) The nature of the soils and subsoils and their ability to adequately support waste disposal;
- (c) ~~The slope of the land and its effect on effluents~~ The slope of the land and its effect on effluents, infiltration capacity, and potential for wastewater breakouts to the land surface;;
- (d) ~~The availability of streams for disposal of effluents~~ The ecological impact on surface water bodies when waste water originating at the site eventually discharges;
- (e) Any applicable state and local health and water resource rules and regulations.

(14) Increase in lake phosphorous concentration prohibited. The long-term cumulative effects of the proposed development will not unreasonably increase a great pond's phosphorus concentration during the construction phase or during the life of the development. The development shall meet the phosphorus requirements of Maine Department of Environmental Protection Rules, Chapter 500: STORMWATER MANAGEMENT, and Chapter 502: DIRECT WATERSHEDS OF WATERBODIES MOST AT RISK FROM NEW DEVELOPMENT, AND SENSITIVE OR THREATENED REGIONS OR WATER-SHEDS. The development shall use the Maine Stormwater Best Management Practices Manual published by the Maine Department of Environmental Protection in the control of phosphorus.

- L. Stormwater management. All site plans shall demonstrate that the proposed development shall provide for adequate stormwater management in compliance with the following standards:
- (1) All new construction and development, whether or not served by a stormwater collection and transportation system, shall be designed to reflect or resemble, as nearly as possible, natural runoff conditions in terms of volume, velocity and location of runoff. If runoff into receiving waters other than direct discharge to the ocean after development would exceed by 10% predevelopment runoff conditions, the off-site impact must be evaluated in terms of potential soil erosion and sedimentation, drainage capacity, land use and land cover characteristics. Appropriate methods of reducing off-site impact shall be employed. Stormwater management evaluations and designs shall be based on a twenty-four-hour, twenty-five-year recurrence interval storm except detention pond spillways, which shall be designed for the 100-year, 24-hour storm event.
  - (2) Stormwater runoff systems should be designed to facilitate aquifer recharge when it is advantageous to compensate for groundwater withdrawals or reductions in infiltration. Conversely, designs should avoid recharge where groundwater effects might be harmful. The development shall use the Maine Stormwater Best Management Practices Manual in the control of stormwater published by the Maine Department of Environmental Protection Design of permanent storage facilities should consider safety, appearance, recreational use, and cost and effectiveness of maintenance operations, in addition to the primary storage function. Natural overland flows and open drainage channel and swale locations should be the preferred alignments for major components of a residential drainage system. The use of enclosed components, such as underground piping, should be minimized where the existing natural systems are able to accommodate storm runoff. Energy dissipaters, to reduce high flow velocities, and other forms of outfall protection shall be employed where enclosed drains discharge onto erodible soils. Stormwater and surface water runoff, whether channelized or not, shall not be diverted onto adjacent properties without an easement, unless in a natural or previously existing channel.
  - (3) The stormwater management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built, and shall include a surplus design capacity factor of 25% for potential increases in upstream runoff the peak 25-year, 24-hour upstream runoff rate.
  - (4) Downstream drainage requirements shall be studied to determine the effect of the proposed development, including the twenty-five-percent surplus design capacity factor as required above. The storm drainage shall not overload existing or future planned storm drainage systems downstream from the development. The applicant shall be responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.
  - (5) The minimum pipe size for any storm drainage pipe shall be 12 inches. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded ~~in a fine granular material~~ crushed stone or widely graded gravel with a uniformity coefficient of >6 and less than 10% passing the #200 sieve , and, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe and extending to six inches above the top of the pipe.
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- N. Sewage disposal. All site plans shall demonstrate that the proposed development will provide for adequate sewage waste disposal, subject to the following standards:

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- (3) When a development will produce sewage and when the development will not be serviced by municipal sewage waste disposal facilities, the applicant shall present a Maine Department of Human Services Bureau of Health Engineering site evaluation form, completed by a licensed site evaluator, evidencing adequate soil conditions for sufficient subsurface wastewater disposal and shall also present sufficient evidence that the proposed subsurface wastewater facilities, when considered with other such facilities in the vicinity, will not have an undue adverse environmental effect. All subsurface sewage disposal systems shall be installed or replaced in conformance with the State of Maine Subsurface Wastewater Disposal Rules. ~~The Planning Board shall not approve any development that employs a subsurface wastewater disposal system and is located on soils rated severe or very severe by the County Soil Survey of the United States Department of Agriculture Soil Conservation Service unless satisfactory evidence is presented that construction methods will overcome soil inadequacies.~~ If soils are in design class A according to the licensed site evaluator's report, at least 5 subsurface probes or test pits are required in each proposed leachfield area.

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- Q. Erosion. All site plans shall demonstrate that the proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results and further that the following standards will be met during construction and after completion:

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- (15) The proposed development shall use the Maine Erosion and Sediment Control BMPs (Best Management Practices) published by the Maine Department of Environmental Protection in the control of sediment and erosion.

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- NN. Natural features. If any portion of the site has been identified by the Maine Natural Areas Program, the Maine Department of Inland Fisheries and Wildlife, and/or the U.S. Fish and Wildlife Service as containing natural features of interest, the development shall include appropriate measures for protecting those resources including but not limited to modifications of the proposed design of the site, timing of construction, and limiting the extent of excavation.

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## K. Council Rules of Order –

1. *Request of Council Chair Eveland for a brief review of Rules of Order for the operation of Council meetings.* – Mr. Paradis, with second by Mr. Smith, moved to amend Council Rules of Order to specifically mention Roberts Rules of Order and ask staff to return to Council with proposed language. Motion passed 7-0.
2. *Review and possible adoption of a draft rule on staff communications to Councilors.* – Mr. Paradis, with second by Mr. Smith, moved to adopt the Council Rules of Order amendment as proposed in the Town Manager memo to Council dated January 25, 2008. Motion passed 7-0.

**L. Boards & Committees** – *Review and possible approval of specific dates for Council consultations with each appointed Town committee.* – Mr. Paradis, with second by Mr. Smith, moved to adopt the proposed draft schedule as submitted using the approach outlined in the Manager's Memo dated January 25, 2008 in the section titled "Boards & Committees". Motion passed 7-0. Council Chair will write letters to board chairs.

**M. School Reorganization** – *Status report by Council's representative to the Reorganization Planning Committee, Councilor Bob Garland.* – Councilor Garland reported Gail Marshall, RPC Chair, last reported that it is still in the political process. We have support from our local legislators for MDI regional proposed plan.

**N. Treasurer's Warrant** – *Request of Treasurer to authorize paid bills.* – Mr. Paradis, with second by Mr. Smith, moved to sign the Treasurer's warrant for paid bills. Motion passed 7-0.

## **VII. COUNCIL COMMENTS AND SUGGESTIONS FOR NEXT AGENDA**

**Mr. Jordan** requested for a future agenda a discussion of the transfer station and the neighbor situation. In addition, he would like to discuss with the Planning Director, Planning Board, and Design Review Board about transition zones between businesses and residential. And another future item request following this evening meeting, Council's behavior in front of the public.

**Mr. Veilleux** thanked Jennifer Booher for her service to the Planning Board.

**Ms. Schloss** seconded Mr. Veilleux's sentiments.

**Mr. Smith** commented that if Acadia National Park is playing a role in overseeing the Town and cell towers, the ANP land in Town Hill can be overseen by the Town.

Mr. Smith extended an invitation site visit of the new dwellings in the Northeast Creek development to all who wanted to attend. Notice of the Council assembling for the site would be posted for the January 31<sup>st</sup> visit.

Mr. Smith noted that the Ferry Task Force were unsuccessful in trying to meet with the CAT Ferry representative and requested staff to contact Chris Fogg of the Chamber of Commerce to make one more attempt to schedule a meeting.

**Mr. Garland** thanked the Town Manager for his recent memo regarding inter-departmental cooperation. He appreciated it.

## **VIII. MATTERS FOR POSSIBLE EXECUTIVE SESSION:** (none scheduled)

**IX. ADJOURNMENT** – Mr. Paradis, with second by Mr. Smith, moved to adjourn at 10:51 p.m. Motion passed 7-0.

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Paul Paradis, Secretary